

SENATE BILL NO. 466

INTRODUCED BY ESP

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FORCED RECONVEYANCE OF TRUST INDENTURES UNDER THE SMALL TRACT FINANCING ACT OF MONTANA; PROVIDING DEFINITIONS; PROVIDING NOTICE AND RECONVEYANCE FORMS; PROVIDING FOR THE RECOVERY OF COSTS BY TITLE INSURERS AND TITLE INSURANCE PRODUCERS WHEN BENEFICIARIES OR SERVICERS FAIL TO RECONVEY UPON THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE; AMENDING SECTIONS 71-1-303 AND 71-1-307, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-303, MCA, is amended to read:

"71-1-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or the person's successor in interest, who may not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Servicer" means a person who collects loan payments on behalf of a beneficiary.

(4) (a) "Title insurance producer" means a person who holds a valid title insurance producer's license and is authorized in writing by a title insurer to:

(i) solicit title insurance business;

(ii) collect rates;

(iii) determine insurability in accordance with underwriting rules and standards of the insurer; or

(iv) issue policies of the title insurer.

(b) Title insurance producer does not include an approved attorney.

(5) "Title insurer" means an insurer formed and authorized under the laws of this state to transact the business of title insurance in this state or a foreign or alien insurer authorized to transact title insurance in this state.

~~(3)~~(6) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

~~(4)~~(7) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or the person's successor in interest."

NEW SECTION. Section 2. Reconveyance of trust indenture -- forms -- objections to reconveyance. (1) A title insurer or title insurance producer may reconvey a trust indenture in accordance with the provisions of this section if:

(a) the obligation secured by the trust indenture has been fully paid by the title insurer or title insurance producer; or

(b) the obligation secured by the trust indenture was fully paid by a former title insurer, title insurance producer, or predecessor of the title insurer or title insurance producer.

(2) A title insurer or title insurance producer may reconvey a trust indenture regardless of whether the title insurer or title insurance producer is named as a trustee under a trust indenture.

(3) At the time that the obligation secured by the trust indenture is paid in full, or at any time after payment, the title insurer or title insurance producer shall deliver by certified mail a notice of intent to reconvey and a copy of the reconveyance to be recorded to the beneficiary or servicer at:

(a) the address specified in the trust indenture;

(b) any address for the beneficiary or servicer specified in the last-recorded assignment of the trust indenture;

(c) any address for the beneficiary or servicer specified in a request for notice recorded under 71-1-314;

or

(d) the address shown on any payoff statement received by the title insurer or title insurance producer from the beneficiary or servicer.

(4) (a) The notice of intent to reconvey must contain the name of the beneficiary and the servicer if loan payments on the trust indenture are collected by a servicer, the name of the title insurer or title insurance producer, and the date that the notice is signed.

(b) The notice must be substantially in the following form:

"NOTICE OF INTENT TO RECONVEY

NOTICE IS HEREBY GIVEN TO YOU AS FOLLOWS:

1. THIS NOTICE CONCERNS THE (TRUST INDENTURE) DESCRIBED AS FOLLOWS:

(GRANTOR):

(BENEFICIARY):

.....

RECORDING INFORMATION:

DOCUMENT NUMBER:

BOOK NUMBER:

PAGE NUMBER:

2. THE UNDERSIGNED CLAIMS TO HAVE PAID IN FULL OR POSSESSES SATISFACTORY EVIDENCE OF THE FULL PAYMENT OF THE OBLIGATION SECURED BY THE TRUST INDENTURE DESCRIBED ABOVE.

3. THE UNDERSIGNED WILL FULLY RECONVEY THE TRUST INDENTURE DESCRIBED IN THIS NOTICE WITHIN 90 DAYS FROM THE DATE STATED ON THIS NOTICE UNLESS:

(A) A RECONVEYANCE OF THE TRUST INDENTURE HAS BEEN RECORDED; OR

(B) THE UNDERSIGNED HAS RECEIVED BY CERTIFIED MAIL A NOTICE STATING THAT THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS NOT BEEN PAID IN FULL OR THAT YOU OTHERWISE OBJECT TO THE RECONVEYANCE OF THE TRUST DEED. NOTICE MUST BE MAILED TO THE ADDRESS STATED ON THIS FORM.

(C) PURSUANT TO 71-1-307, MCA, A BENEFICIARY OR SERVICER MAY BE LIABLE FOR DAMAGES, COSTS, AND PENALTIES FOR FAILING TO RECONVEY A TRUST INDENTURE WITHIN 90 DAYS OF THE DATE STATED IN THIS NOTICE IF THE OBLIGATION SECURED BY THE TRUST INDENTURE HAS BEEN FULLY PAID PRIOR TO THE DELIVERY OF THIS NOTICE.

4. A COPY OF THE RECONVEYANCE OF TRUST INDENTURE IS ENCLOSED WITH THIS NOTICE.

.....

(SIGNATURE OF TITLE INSURER OR TITLE INSURANCE PRODUCER)

.....

(ADDRESS OF TITLE INSURER OR TITLE INSURANCE PRODUCER)"

(5) (a) If, within 90 days from the day on which the title insurer or title insurance producer delivers the notice of intent to reconvey, the beneficiary or servicer does not send by certified mail to the title insurer or title

insurance producer a notice that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture, the title insurer or title insurance producer may execute, acknowledge, and record a reconveyance of a trust indenture.

(b) A reconveyance of a trust indenture must be in substantially the following form:

"RECONVEYANCE OF TRUST INDENTURE

(Name of title insurer or title insurance producer) authorized to conduct business in this state reconveys, without warranty, the following trust property located in (name of county), state of Montana, that is covered by a trust indenture naming (name of grantor) as grantor, and (name of beneficiary) as beneficiary that was recorded on (date) in book at page as document number: (insert a description of the trust property.)

The undersigned title insurer or title insurance producer certifies as follows:

1. The undersigned title insurer or title insurance producer has fully paid the obligation secured by the trust indenture or possesses satisfactory evidence of the full payment of the obligation secured by the trust indenture.

2. As required by [section 2], the title insurer or title insurance producer delivered to the beneficiary or servicer a notice of intent to reconvey and a copy of the reconveyance.

3. The trust indenture has not been reconveyed and the title insurer or title insurance producer did not receive, within 90 days from the day on which the title insurer or title insurance producer delivered the notice of intent to reconvey to the beneficiary or servicer, a notice from the beneficiary or servicer, sent by certified mail, that the obligation secured by the trust indenture has not been paid in full or that the beneficiary or servicer objects to the reconveyance of the trust indenture.

.....

(Notarization)

(Signature of title insurer or title insurance producer)"

(c) (i) A reconveyance of trust indenture executed and notarized in accordance with subsection (5)(b) may be recorded.

(ii) Except as provided in subsection (5)(c)(iii), a reconveyance of a trust indenture that is recorded in compliance with subsection (5)(c)(i) is valid regardless of any deficiency in the reconveyance procedure not disclosed in the reconveyance of trust indenture.

(iii) If the title insurer's or title insurance producer's signature on a reconveyance of trust recorded under subsection (5)(c)(i) is forged, the release of mortgage or reconveyance of trust is void.

(6) A reconveyance of trust indenture pursuant to the provisions of this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust indenture at the time that the trust indenture was reconveyed.

NEW SECTION. Section 3. Objection to reconveyance. A title insurer or title insurance producer may not record a reconveyance of trust indenture if, within 90 days of the date of the notice of intent to reconvey, the beneficiary or servicer notifies the title insurer or title insurance producer that the obligation has not been paid in full or that the beneficiary or servicer objects to the reconveyance.

NEW SECTION. Section 4. Liability of title insurer or title insurance producer. A title insurer or title insurance producer who reconveys a trust indenture is liable to the beneficiary for damages suffered by the beneficiary as a result of the reconveyance if:

- (1) the obligation secured by the trust indenture is not fully paid;
- (2) the title insurer or title insurance producer failed to comply with the provisions of [section 2]; or
- (3) the title insurer or title insurance producer acted with gross negligence or in bad faith in reconveying the trust indenture.

Section 5. Section 71-1-307, MCA, is amended to read:

"71-1-307. Reconveyance upon performance -- liability for failure to reconvey. (1) Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary or servicer, shall reconvey the interest in real property described in the trust indenture to the grantor. ~~In the event~~ If the obligation is performed and the beneficiary or servicer refuses to request reconveyance or the trustee refuses to reconvey the property within 90 days of the request, the beneficiary, servicer, or trustee so refusing shall be who refuses is liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property to the grantor for the sum of \$500 and all actual damages resulting from the refusal to reconvey.

(2) If a beneficiary or servicer has received a notice of intent to reconvey pursuant to [section 2] and has not timely requested a reconveyance or has not objected to the reconveyance within the 90-day period established in [section 2], the beneficiary or servicer is liable to the title insurer or title insurance producer for the sum of \$500 and all damages resulting from the failure.

(3) In an action by a grantor, title insurer, or title insurance producer to collect any sums due under this section, the court shall award attorney fees and costs to the prevailing party."

NEW SECTION. **Section 6. Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 71, chapter 1, part 3, and the provisions of Title 71, chapter 1, part 3, apply to [sections 2 through 4].

NEW SECTION. Section 7. Applicability. ~~[This act]~~ [SECTION 5] applies to all trust indentures executed on or after ~~[the effective date of this act]~~.

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